

No. 14/13/87-6Lab./350.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. HUDA, Faridabad *versus* Shiv Kumar.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 274/1991

IN THE MATTER OF INDUSTRIAL DISPUTES

between

SHRI SHIV KUMAR, C/O SHRI MOHIT BHANDARI, 360, SECTOR 9, FARIDABAD

.. Workman

and

M/S HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-16(NEAR SECTOR-9), FARIDABAD

.. Management

Present :

Shri B.M. Gupta, Authorised Representative, for the workman.

Shri M. Kaushik, Authorised Representative, for the management.

AWARD

Under the provisions of section 10(1)(c) of Industrial Disputes Act, 1947, the Government of Haryana have, *vide* Endorsement No. 994117—22, dated 14th July, 1986, referred the following dispute to this court for adjudication :—

Whether order of termination of Shri Shiv Kumar is legal and justified. If not, to what relief he is entitled to ?

2. The case of the workman is that he was appointed as Bill Distributor on regular basis against a permanent post on 1st July, 1984 in Sub-Division No. 9 of Division No. II. His contention is that he was neither issued any letter of appointment nor was it made known to him as to whether his services were temporary, casual or 'badli'. Rather, he was given an assurance that his services would be made regular and permanent. His further contention is that he had worked for more than 240 days and used to draw his pay not on wages register but on the muster roll. That abruptly on 1st August, 1985, he was told not to come for duty without there being any prior notice or indication. Compensation as is admissible under Section 25-F of Industrial Disputes Act was also not paid to him. It is for this unfair labour practice of terminating his services when his juniors are still in service that the workman has claimed reinstatement with full back wages and continuity of service.

3. The case of the Management is that the workman was appointed as water pump operator on daily wage basis and his employment was purely temporary. That he was quite an unwilling worker and remained absent from duty and had not completed 240 days of service. So, according to Management the workman does not have any legal right. Other objections taken are that the petitioner is not a workman as defined in Industrial Disputes Act and further to it his case is bad for misjoinder and nonjoinder of necessary parties. Objection that HUDA is not an Industry had also been taken.

4. On the pleadings of the parties following issue was framed on 9th March, 1992 :—

(1) As per reference ?

Prior to it, a preliminary issue *viz.*, "Whether HUDA is an Industry" was framed on 9th December, 1986. The same was decided on 9th March, 1992 holding HUDA to be an Industry as defined in S/2(O)(II) of Industrial Disputes Act, 1947.

As for main issue, two witnesses namely Shri Kartar Singh J.E. and Shri R.C. Bajaj have been examined as MW-1 and MW-2 for the Management, while the workman has been examined as WW-1.

5. I have heard Authorised Representatives of the parties and perused material facts on record. My findings on the issue framed with reasons therefor are as under :—

Issue No. 1 :

6. Shri Kartar Singh, Junior Engineer of HUDA examined as WW-1 stated that the workman was employed on 1st March, 1985 as Bill Distributor on daily wages on the muster roll. That he had worked

upto 31st July, 1985 and did not attend to his duty thereafter and for that reasons some one else was employed in his place. He stated it categorically that the Management had not terminated his services. The witness stated further, that the Management did not issue appointment letter and attendance card in respect of those employed on daily wages nor any deduction or account of ESI or Provident Fund was made. Even attendance register or wages registers were not maintained and the only record prepared was the muster roll. The witness stated further that since the workman had himself left the job, there was no necessity of issuing any order of termination nor any other action was taken against the workman for having stopped attending to his duties. Shri R.C. Bajaj examined as MW-2 stated that during the period from 1st March, 1985 to 31st July 1985, the workman had worked for only 134 days viz. 26 days in March, 27 days in April, 30 days each in May and June and 31 days in July, 1985. The witness also stated that since the entire maintenance work stood transferred to Faridabad Complex, there was no post with the Management on which the workman could be adjusted. This witness also stated that the workman had himself abandoned his job.

7. From the evidence so led, the Management has proved that the employment of the workman was on daily wage basis and he had worked only for 134 days. The workman has not led any evidence to show that his employment was on regular or permanent basis. However, in his examination as WW-1, he had proved it by placing on record Ex. W-1 showing that he had worked for 188 days from 1st July, 1984 to 31st January, 1985 in Sub Division No. 10. The Management has admitted in written statement also in its oral evidence that the workman had worked in Sub-Division No. 9 from 1st March, 1985 to 31st July, 1985 i.e. for 134 days. Both the periods put together make a total of more than 240 days. Admittedly, the workman was a daily wage earner, but when he had completed service of more than 240 days, rules of natural justice require that the Management should have written a letter to the workman to come and join service by a specific date otherwise it would be presumed that he was not interested in the job. Shri Kartar Singh examined as MW-1 admitted that no such letter was sent to the workman. So, for violation of rules of natural justice, the management must be taken to have acted illegally. In result, an award is passed in favour of the workman and against the management directing the latter to take the workman back into service. Since the employment of workman Shri Shiv Kumar was on daily wage basis, he will not be entitled to any other benefits viz., back wages or continuity of service.

N.L. PRUTHI
Presiding Officer,
Industrial Tribunal-Cum-
Labour Court-I, Faridabad.

Dated : The 22nd April, 1994

Endorsement No. 799, dated the 23rd April, 1994

A copy is forwarded to the following:—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Faridabad-I.

N.L. PRUTHI
Presiding Officer,
Industrial Tribunal-Cum-
Labour Court-I, Faridabad.

No. 14/13/87-Lab./351.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/S Chief Administrator, Faridabad *versus* Mor Pal.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Ref. 453 No. of 87
IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI MOR PAL S/O SHRI JAGAN NATH, 1-D/66-A, N.I.T. FARIDABAD.

.. Petitioner

and

M/S CHIEF ADMINISTRATOR, FARIDABAD COMPLEX ADMINISTRATION, FARIDABAD.

.. Respondent

Present :

Shri Pardeep Sharma, AR for the workman

Shri B.S. Yadav, AR for the Respondent.

AWARD

Under the provisions of Section 10 (1) (d) of Industrial Disputes Act, 1947, the Government of Haryana had,—vide Endst. No. OV/FD/ 96-87/43718—23, dated 4.11.87, referred the following dispute between the parties above mentioned for adjudication:—

“Whether the services of Sh. Mor Pal were terminated in a legal and justified manner. If not, to what relief he is entitled?”

2. The case of the workman is that he had joined the services of the Respondent on permanent basis w.e.f. 31st December, 1970 and was holding the job of ‘Safai Darogha’ and his last drawn monthly wages were Rs. 1138. That his work and conduct had always been found satisfactory and that in the year 1986 he was given promotion as well. The contention of the workman further is that being an executive union worker, he had raised his voice for the general welfare of the employees against the atrocities of the Deptt. This had caused annoyance to the high ups and in pursuit of their vile designs, they had stopped his two annual increments. That when he had lodged a protest against the above said act of vengeance, he has given totally a falacious charge-sheet on 26th September, 1986 alleging thereon that he had hurled abuses at the Health Officer and threatened him as also the Deputy Commissioner to drag them to the court of law as they were instrumental in getting his two annual increments stopped. A charge sheet based thereon was issued to him only to victimise him and the explanation furnished by him was also turned down and mock enquiry was there after held into the matter. Further contention of the workman is that the Enquiry Officer had neither supplied him a list of witnesses nor the documents relied upon by the Administration. So much so, that copies of day-to-day proceedings of the Enquiry or even of Enquiry report were also not supplied to him. The workman has also taken a stand that reply given by him to the show cause notice was not all considered and that opportunity of being heard in person before inflicting upon him the punishment of dismissal was also not afforded to him. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

3. In the reply filed by the Respondent, stand taken is that Mor Lal appointed as “Safai Daroga” on temporary basis on 15th April, 1970 was confirmed on 30th April, 1971. Since his work and conduct was not satisfactory, he was never promoted in the year 1986. It has been denied that the workman was an active worker of the Union and for that reason the Administration was annoyed with him and wanted to cause harm to him and for that reason had stopped his two annual increments. The case of the Respondent is that in fact the workman was transferred to Faridabad complex Administration Old Faridabad,—vide order dated 10th October, 1983 and he had refused to go to Faridabad Old zone and had rather threatened the concerned Officials of the Administration that for his transfer they will have to face dire consequences. He is alleged to have used filthy language and for that act of his, he was issued charge-sheet. An enquiry was conducted against him and the charges levelled were proved against him. Consequently, his two increments were stopped. It has further been contended that there after the workman is alleged to have gone to the Health Officer of F.C.A and told him that the Health Officer and Deputy Commissioner were instrumental in the stoppage of his two increments. So, on 24th September, 1986 he was issued a charge sheet and an enquiry was got conducted against him. The enquiry officer had found the workman guilty of misconduct. According to the Respondent, the Enquiry Officer had given full opportunity to the workman to defend his case. Before inflicting punishment of dismissal for his proven rule behaviour a show cause notice was given to the workman. The reply furnished by the workman was found to be unsatisfactory. There after, he was given a personal hearing by the Chief Administrator on 19th March, 1987 and it was thereafter that order of dismissal were passed.

4. In the rejoinder, pleas taken in the demand notice were reiterated while those in the written statement controverted. On the pleadings of the parties following issue was framed on 1st March, 1986:—

(1) As per reference.

5. Four witnesses have been produced by the Respondent namely Satya Narain (MW-1), Smt. Trimla Thakur (MW-2), S.D. Chaudhary (MW-3) and Laxmi Narayan Gaiinda (MW-4). As against this, the workman Mor Lal has been examined as WW-1.

6. I have heard AR for the parties and perused material facts on record. My findings on the issue framed with reasons therefore are as under :—

Issue No. 1:

7. The order of dismissal of the workman has passed on the basis of enquiry report Ex. M-14 furnished by the Enquiry Officer Luxmi Narayan. It has thus to be seen as to whether the Enquiry conducted was fair and proper and whether during the course of enquiry proceedings the Enquiry Officer had given proper opportunity to the delinquent to plead and prove his defence. Luxmi Narayan Gaiinda Enquiry Officer examined as MW-4 stated that workman Mor Lal was present throughout the proceedings and the witnesses of the Respondent were examined in his presence and he was given opportunity to cross-examine the witnesses and also to give his witnesses in defence. The Enquiry Officer also stated that the list of the witnesses was given to the workman alongwith the charge sheet. As regards supply of documents tendered during the enquiry proceeding and also copies of day-to-day enquiry proceedings, the witness stated that he did not remember exactly but if the workman had asked the same must have been supplied to him. However, in reply to are court question the witness stated that at no stage of the proceeding the workman had ever asked for copy of any documents or copy of any day's proceedings. The witness also denied that he had not given proper opportunity to the workman in the matter of enquiry.

8. In his examination-in-chief, the workman denied that he had been given proper opportunity to defend his case. But in his cross examination, he admitted that the enquiry was

conducted in his presence, and the statement of the witnesses were also recorded in his presence. He also admitted having given a statement before the Enquiry Officer on 3rd December, 1986 that the reply given by him to the charge-sheet be taken his statement and that he was not to produce any more witness because he was never supplied with a list of witnesses and that the witnesses produced were all false. The workman also admitted that personal hearing was given to him by the Chief Administrator but he was not allowed to make his submissions before him. The workman also admitted that he had not made a complaint anywhere that the Enquiry Officer had not given him list of witnesses or copies of documents or had not given him opportunity to produce his witnesses or cross-examine the witnesses of the Respondent.

9. The list of witnesses Ex. M-5 is shown to have been appended with charge-sheet Ex. M-4 which was served upon the workman. All the witnesses produced by the Respondent were subjected to cross examination by the workman himself. He was also given a chance to have his statement recorded and produce witnesses in his defence. The workman has admitted his presence during the course of entire proceedings and has also admitted having made a statement on 3rd December, 1986 (referred to in para 7 above) that he was not to produce any witness in his defence. The workman has not shown as to on what account the witnesses were bogus. In fact, the Respondent had produced before him three witnesses namely Dr. R.K. Dogra upon whom the workman had hurled filthy abuses, Sh. S.P. Chaudhary Architect and Sh. Tej Bhan Peon who had heard the workman abusing the Medical Officer. The names of these three witnesses appear in the charge-sheet which was served upon the workman. Therefore, on this account there is no substance in the stand of the workman that he was not supplied with a list of witnesses or the witnesses produced were all false. Undisputedly copy of the report of the Enquiry Officer was supplied to the delinquent along with show cause notice Ex. M-15. Reply of the workman to show cause notice is Ex. M-16. It is correct that the signatures of the workman are not there on day-to-day proceedings but the workman has not denied his presence on all the dates fixed for enquiry nor he had made a complaint anywhere that the Enquiry Officer was not preparing honest record, the workman cannot, at this stage, draw any benefit from this stand of his that his signatures were not obtained on day-to-day proceedings. There is no proof that the workman had asked for copies of day-to-day proceedings and he was not supplied with the same. There is also no proof that the workman had asked for the assistance of any outsider and the same was refused. All such objections which have been raised at the time of arguments are rendered of no import when the presence of the workman on each and every date of proceedings is proved and it is also proved that he had cross examined the witnesses of the Respondent and for his case, he had made his own statement and did not produce any witness to corroborate his version.

10. The discussion made above shows that no such irregularity as may have jeopardised the interests of the workman had been committed by the Enquiry Officer. Therefore, in view of this and other points discussed, I hold that this enquiry held in the case of the workman was fair and proper.

11. In the enquiry report Ex. M-14, the Enquiry Officer had held the workman guilty of having misbehaved with the Health Officer on 24th September, 1986. He had abused him at the top of his voice and also by thumping the table, had given a threat to the Health Officer that the Health Officer & Deputy Commissioner were responsible for the stoppage of his two increments and that he would see to both of them and drag them to the court of law by filing a suit for defamation. Based on the above said charges as having been proved, the Respondent had dismissed the workman from service. Before doing so, a show cause notice was issued to the workman and reply given by him considered. The workman is also shown to have been given personal hearing by the Chief Administrative Officer.

12. Shri S.P. Chaudhary Architect examined as MW-3 stated that he had appeared before the Enquiry Officer and had made a statement before him that while he was entering the room of Medical Officer he had seen Mr Lal coming out of the room of Medical Officer and was talking in a threatening tone that he would see to the Medical Officer as also the Deputy Commissioner.

13. Shri Tej Bhan Peon of the Health Officer examined by the Enquiry Officer had also corroborated the version of the Health Officer that workman had hurled filthy abuses upon the Health Officer and had also threatened the Health Officer and Deputy Commissioner of dire consequences.

14. Looking at the testimony of the witnesses examined in Court as also before the Enquiry Officer, it has to be held that the workman had abused and threatened his Officer-in-Charge in presence of Peon Sh. Tej Bhan and within the hearing of Sh. S.P. Chaudhary Architect and for such a proven misbehaviour, the Respondent was right in dismissing the workman from service. Accordingly, holding that the order of the Respondent to dismiss the workman from service is legal and justified and for that matter the workman is not entitled to any relief. An award is passed accordingly.

Dated The 21st July, 1994.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal-Cum-
Labour Court-I, Faridabad.

Endorsement. No. 3225, dated the 27th July, 1994.

A copy with three spare copies are forwarded to the Financial Commissioner & Secretary to Government Haryana, Labour Department, Chandigarh.

N.L. PRUTHI,
Presiding Officer,
Industrial-Tribunal-Cum-
Labour Court-I, Faridabad.